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Filing date: **03/26/2020**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91249427
Party	Defendant Cyberman Security, LLC AKA The CyberHero Adventures: Defenders of the Digital Universe
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Submission	Motion to Extend
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Attachments	Cyberhero - Mot. to Extend Time for EGM to Resp. to Disc. FINAL 3.26.pdf(497405 bytes)

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EVOLUTIONARY GUIDANCE MEDIA R&D INC.,)	
)	
)	
Opposer,)	Opposition No. 91249427
)	
)	88219305
v.)	
)	
)	
CYBERMAN SECURITY, LLC AKA THE CYBERHERO ADVENTURES: DEFENDERS OF THE DIGITAL UNIVERSE)	Mark: THE CYBERHERO ADVENTURES: DEFENDERS OF THE DIGITAL UNIVERSE
)	
Applicant)	Published: May 14, 2019
)	
)	

APPLICANT'S MOTION TO EXTEND DISCOVERY DEADLINE

Applicant moves the Trademark Trial and Appeal Board for an extension of time to require Opposer to answer/respond to Applicant's First Set of Requests for Production to Opposer, Applicant's First Set of Requests for Admissions to Opposer and Applicant's First Set of Interrogatories to Opposer served electronically on Counsel of Record for Opposer or about February 19, 2020.

The Discovery period closed on March 17, 2020, which was three (3) days before Opposer was required to respond. Applicant has fully responded to Opposer's discovery early, which occurred on March 2, 2020.

Opposer has objected Applicant's discovery on the ground that discovery was closed by three (3) days.

During the week of March 16, 2020, Applicant requested that Opposer agree to a stipulation to extend discovery nunc pro tunc so Opposer could properly respond/answer Applicant's discovery requests. Opposer has not given a positive response to that request and, instead, has objected to over 90 % of the discovery solely based on the close of discovery.

Applicant certainly appreciates that pursuant to TBMP Rule 403.01, Opposer is within its rights to not provide discovery because responses would be due a few days after the close of discovery. . However, TBMP Rule 501.01 provides in pertinent part:

*“Subject to the approval of the Board, **parties may stipulate** to a wide variety of matters. For example, parties may stipulate: that times be extended or reopened; that the total number of interrogatories or requests for production that one party may serve upon another party in a proceeding may be reduced from the limitation specified in **37 C.F.R. § 2.120(d)** or **37 C.F.R. § 2.120(e)**”*

37 C.F.R. § 2.120(a)(2) provides in pertinent part :

*“**Parties may modify the discovery and trial schedule**, including the deadline for making disclosures, if the parties file, and the Board approves, a stipulation or motion to that effect. [Note 3]. Parties must inform the Board, by stipulation or motion, any time they agree to modify their obligations under the rules governing disclosures and discovery, as well as when they agree to modify deadlines or schedules that involve disclosures, discovery, trial or briefing. [Note 4]In addition to stipulating to extend the discovery period, parties may stipulate to shorten the discovery period.”*

Here, no request by either party has occurred in this proceeding except Opposer’s request to a 30-day extension to file its Opposition. Applicant has not requested any extensions for any purpose before the filing of this motion. Opposer’s discovery requests were filed about one week before Applicant’s requests as it appeared the parties were cordially moving forward without the need or cost of such discovery. The trivial deferment of 3 days by Applicant was only the time to ensure the parties were on equal footing.

Incidentally, there is no substantial harm to Opposer to complete its responses having now had the 30 days to prepare for doing so. Any delay by Applicant was also due to its recent attempts in the last three weeks to settle the matter in its entirety, which includes delays by Opposer in responding in any evocative means to resolving this case and its related action (Opposition No. 91253845). Opposer may still stipulate to the few days extension but Applicant has no knowledge of that.

In addition to the above matter, it would also be of monumental assistance to those of us fighting at the epicenter of the coronavirus in New York City beginning more than 45 days ago. An extension of ten (14) days until March 31, 2020, or soon thereafter as would be deemed proper and necessary, so Opposer can properly respond to Applicant's requests stated herein.

Respectfully submitted,

DATED this 26th day of March, 2020.

RIMON, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2020, a copy of the above Applicant's Motion to Extend Discovery Deadline was served by electronic mail on Opposer's attorney of record as follows:

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